

(1) Whether the deficiencies pose immediate jeopardy.

(2) The nature, incidence, severity, and duration of the deficiencies or noncompliance.

(3) Whether the same condition level deficiencies have been identified repeatedly.

(4) The accuracy and extent of laboratory records (e.g., of remedial action) in regard to the noncompliance, and their availability to the State, to other CMS agents, and to CMS.

(5) The relationship of one deficiency or group of deficiencies to other deficiencies.

(6) The overall compliance history of the laboratory including but not limited to any period of noncompliance that occurred between certifications of compliance.

(7) The corrective and long-term compliance outcomes that CMS hopes to achieve through application of the sanction.

(8) Whether the laboratory has made any progress toward improvement following a reasonable opportunity to correct deficiencies.

(9) Any recommendation by the State agency as to which sanction would be appropriate.

(e) *Number of alternative sanctions.* CMS may impose a separate sanction for each condition level deficiency or a single sanction for all condition level deficiencies that are interrelated and subject to correction by a single course of action.

(f) *Appeal rights.* The appeal rights of laboratories dissatisfied with the imposition of a sanction are set forth in § 493.1844.

[57 FR 7237, Feb. 28, 1992; 57 FR 35761, Aug. 11, 1992, as amended at 60 FR 20051, Apr. 24, 1995]

§ 493.1806 Available sanctions: All laboratories.

(a) *Applicability.* CMS may impose one or more of the sanctions specified in this section on a laboratory that is out of compliance with one or more CLIA conditions.

(b) *Principal sanction.* CMS may impose any of the three principal CLIA sanctions, which are suspension, limitation, or revocation of any type of CLIA certificate.

(c) *Alternative sanctions.* CMS may impose one or more of the following alternative sanctions in lieu of or in addition to imposing a principal sanction, except on a laboratory that has a certificate of waiver.

(1) Directed plan of correction, as set forth at § 493.1832.

(2) State onsite monitoring as set forth at § 493.1836.

(3) Civil money penalty, as set forth at § 493.1834.

(d) *Civil suit.* CMS may bring suit in the appropriate U.S. District Court to enjoin continuation of any activity of any laboratory (including a CLIA-exempt laboratory that has been found with deficiencies during a validation survey), if CMS has reason to believe that continuation of the activity would constitute a significant hazard to the public health.

(e) *Criminal sanctions.* Under section 353(1) of the PHS Act, an individual who is convicted of intentionally violating any CLIA requirement may be imprisoned or fined.

[57 FR 7237, Feb. 28, 1992, as amended at 58 FR 5237, Jan. 19, 1993]

§ 493.1807 Additional sanctions: Laboratories that participate in Medicare.

The following additional sanctions are available for laboratories that are out of compliance with one or more CLIA conditions and that have approval to receive Medicare payment for their services.

(a) *Principal sanction.* Cancellation of the laboratory's approval to receive Medicare payment for its services.

(b) *Alternative sanctions.* (1) Suspension of payment for tests in one or more specific specialties or subspecialties, performed on or after the effective date of sanction.

(2) Suspension of payment for all tests in all specialties and subspecialties performed on or after the effective date of sanction.

§ 493.1808 Adverse action on any type of CLIA certificate: Effect on Medicare approval.

(a) *Suspension or revocation of any type of CLIA certificate.* When CMS suspends or revokes any type of CLIA certificate, CMS concurrently cancels the